

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

Court of Appeals of the District of Columbia

APRIL TERM, 1908

No. 1895

HENRY B. F. MACFARLAND, HENRY L. WEST and JAY
J. MORROW, Commissioners of the District of Columbia,
Appellants,

vs.

JAMES ELVERSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 1895

HENRY B. F. MACFARLAND, HENRY L. WEST AND JAY J. MORROW,
Commissioners of the District of Columbia, Appellants,

v's.

JAMES ELVERSON.

a Supreme Court of the District of Columbia.

District Court, No. 749.

In re: CONDEMNATION OF LAND FOR A RIGHT OF WAY FOR A
TRUNK SEWER THROUGH PARCELS 39/2, 52/2, AND THE
TRACT KNOWN AS CLIFTON IN THE DISTRICT
OF COLUMBIA.

UNITED STATES OF AMERICA, }
District of Columbia. } ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:—

1 Petition.

Filed October 7, 1907.

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court, No. 749.

In re: CONDEMNATION OF LAND FOR A RIGHT OF WAY FOR A
TRUNK SEWER THROUGH PARCELS 39/2, 52/2, AND THE
TRACT KNOWN AS CLIFTON IN THE DISTRICT
OF COLUMBIA.

The petition of Henry B. F. Macfarland, Henry L. West and Jay J. Morrow respectfully shows:—

1. That they are the Commissioners of the District of Columbia, and file this petition for the purpose of acquiring the rights of way hereinafter described for the purpose of constructing thereon a trunk sewer, under the authority of Chapter 15 of the Code of Law for the District of Columbia.

2. That by the provision of the aforesaid Chapter 15 of the said Code, the Commissioners of the said District whenever land is needed in the said District for a right of way for sewers, are authorized to make application to the Supreme Court of the District of Columbia for the ascertainment of the value of the said right of way and the condemnation of the same, if the said right of way cannot be acquired by purchase from the owners thereof at a price satisfactory to the officers of the Government authorized to negotiate for the same.

3. That in the judgment of your petitioners it is necessary for the District of Columbia to procure the hereinafter described rights of way through the pieces and parcels of land hereinafter mentioned as shown on the map or plat filed herewith and marked Exhibit D. C., No. 1, for the purpose of the construction thereon of a trunk sewer as aforesaid.

4. That your petitioners have endeavored to acquire the said rights of way by purchase from the owners thereof, but have been unable to obtain the same at a satisfactory price.

5. That the rights of way needed for the construction of the aforesaid sewer, with the names and residences of the owners thereof so far as the same can be ascertained, are particularly described as follows:—

First. A right of way twelve (12) feet wide across a tract of land in the District of Columbia containing 6.80 acres, lying in part along the easterly side of square 1299, and recorded as parcel 39/2 for the purposes of assessment and taxation in the Office of the Surveyor of the District of Columbia: the center line of said right of way lying as follows:—

Beginning at a point on the line forming the easterly boundary of the land of the National Safe Deposit Savings and Trust Company, and part of the westerly boundary of the land of Morris Adler 85 feet from a peg at the southeasterly corner of the said land of the said National Safe Deposit

Savings and Trust Company, thence N. 72 degrees 13

3 minutes East 347 feet, thence by two lines,—

The first south 62 degrees, 27 minutes East 160 feet more or less to the land of James Elverson.

The second north 31 degrees, 5 minutes West 125 feet more or less to the land of James Elverson.

Owner, Morris Adler. Residence 3148 M Street N. W.

Second. A right of way 12 feet wide across a tract of land known as Clifton and containing 37.50 acres, and recorded for the purposes of assessment and taxation as parcel 39/5 in the Office of the Surveyor of the District of Columbia, the center line of said right of way lying as follows:—

Beginning at a point on the line forming the boundary between the lands of the said James Elverson and the said Morris Adler 70 feet from the most easterly corner of the land of the said Morris Adler, thence South 62 degrees, 27 minutes East 75 feet more or less to a point 148 feet North of the north building line of T Street prolonged, thence parallel to the established north building line of T Street 610 feet, thence South 63 degrees, 42 minutes East 490 feet more or less to the land of Robert Barnard's heirs.

Owner—James Elverson, Residence—

Third. A right of way 12 feet wide across the aforesaid tract known as Clifton, the center line of said right of way lying as follows:—

Beginning at a point on the line forming a boundary between the lands of the said James Elverson and Morris Adler 354 feet from the most easterly corner of the said land
4 of the said Morris Adler, thence North 31 degrees, 5 minutes West 280 feet more or less to the land of Henry E. Weaver.

Owner—James Elverson, Residence—

Fourth. A right of way 12 feet wide across a tract of land in the District of Columbia lying south of the said tract called Clifton and north of the land of the Boyce heirs, assessed in the name of Robert Barnard's heirs and containing 5 acres, recorded as parcel 52/2 for purposes of assessment and taxation in the Office of the Surveyor of the District of Columbia, the center line of said right of way lying as follows:—

Beginning at the intersection of the last line of the right of way across the land of James Elverson as described in the second paragraph of this description, and boundary line between the lands of the said James Elverson and the said Robert Barnard's heirs, thence prolonging the said last line described in the said foregoing second paragraph South 63 degrees, 42 minutes East 320 feet more or less to a point 550 feet from the starting point of the said last line in the said foregoing second

paragraph, thence North 86 degrees, 17 minutes East 340 feet, thence North 60 degrees, 22 minutes East 400 feet more or less to the easterly boundary of the said tract.

Owners—John, Robert B., Frank, Mary, Amelia and Sophia Higgins, Rockville Maryland; Margaret Welch Rockville Md.; Fannie, Richard, William, Joseph B., Robert E., Frank, John, Caroline and Kate Barnard of Sloane Iowa; Ginnie,

5 John Robert and William Stone Brightwood D. C.; Theodosia Hamilton Lutherville Md.; John J. Barnard The Portner Washn. D. C.; Edward and George F. Barnard Scranton Pa.; Lawrence C. Barnard Crawford Colorado; Montrose Barnard Wilkesbarre Pa.; Frederick Barnard Hamilton Ohio; Eleanor Partridge Fort Collins Colorado; Robert B. Cissel Elizabeth N. J.; Rebecca C. Coursen Scranton Pa.

The premises considered, your petitioners pray:

First. That the persons mentioned in the preceding paragraph and all other persons interested in the land hereinbefore described may be cited to appear in this Court at a time to be fixed by the Court to answer this petition and the prayers thereof.

Second. That the Court appoint three capable and disinterested Commissioners to appraise the value of the land to be taken for the purpose aforesaid under such regulations as to notice and hearing as may seem meet, in accordance with the provisions of the said Chapter 15 of the Code of Law for the District of Columbia.

Third. That the said hereinbefore described rights of way be condemned for the purpose of the construction and maintenance thereon, of a trunk sewer as aforesaid.

Fourth. That such other proceedings may be taken and such orders passed in the premises as the nature of the case may require.

EDWARD H. THOMAS,
J. F. SMITH,

Attorneys for D. C.

HENRY B. F. MACFARLAND,
HENRY L. WEST,
JAY J. MORROW,

Commissioners, D. C.

6 DISTRICT OF COLUMBIA, ss:—

Personally appears Henry B. F. Macfarland, who upon oath says, that he is President of the Board of Commissioners of the District of Columbia, whose foregoing petition he has read and that the facts therein stated are true to the best of his official knowledge and belief.

Subscribed and sworn to before me this thirtieth day of September, A. D., 1907.

WILLIAM TINDALL,
Notary Public, D. C.

[SEAL]

Order for Citation and Publication.

Filed October 7, 1907.

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court, No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2 AND
"CLIFTON" FOR A RIGHT OF WAY FOR A TRUNK SEWER.

Upon consideration of the petition of the Commissioners of the District of Columbia, filed in the above-entitled cause, and on motion of counsel for the said Commissioners, it is by the Court this 7th day of October, A. D., 1907, Ordered:

7 That the Clerk of the Court issue a citation to John Higgins, Robert B. Higgins, Frank Higgins, Mary Higgins, Amelia Higgins and Margaret Welch, Rockville, Maryland; Fannie Barnard, Richard Barnard, William Barnard, Joseph B. Barnard, Robert E. Barnard, Frank Barnard, John Barnard, Caroline Barnard and Kate Barnard of Sloane, Iowa; Ginnie Stone, John Stone, Robert Stone and William Stone, Brightwood, D. C.; Theodosia Hamilton, Lutherville, Md.; John J. Barnard, The Portner, Washington, D. C.; Edward Barnard, George F. Barnard, Scranton, Pa.; Lawrence C. Barnard, Crawford, Col.; Montrose Barnard, Wilkesbarre, Pa.; Frederick Barnard, Hamilton, Ohio; Eleanor Partridge, Fort Collins, Colorado; Robert B. Cissel, Elizabeth, N. J.; Rebecca C. Coursen, Scranton, Pa.; Maurice Adler and James Elverson, Washington, D. C. to appear in this Court on the 28th day of October, A. D., 1907, at 10 o'clock, A. M., to answer the said petition and to show cause why the prayers thereof should not be granted, and why the rights of way through Parcels 39/2, 52/2 and Clifton, more particularly described in the petition filed herein, should not be condemned for the purpose of providing a right of way for a trunk sewer through the aforesaid parcels of land. It is further ordered, That a copy of said citation be served by the United States Marshal for the

District of Columbia upon such owners of the land sought to be condemned herein, and such persons interested therein, as may be found by the said Marshal, or his deputies, within the District of Columbia; and it is further ordered: That all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this Court on
 8 or before the said 28th day of October, A. D., 1907, to answer the said petition and to continue in attendance until the Court shall have made its final order, ratifying and confirming the award and report of the Commissioners to be appointed by the Court to appraise the value of the respective interests of all persons concerned in the land and premises mentioned and described in the aforesaid petition. It is further ordered: That a copy of this order be published once in the Washington Law Reporter, and on six secular days in the Washington Evening Star, The Washington Post, and the Washington Herald, newspapers published in the said District, before the said 28th day of October, A. D., 1907.

By the Court,

JOB BARNARD,

Justice.

9 Supreme Court of the District of Columbia.

Holding a Special Term as a District Court of the United States for the District of Columbia.

No. 749.

IN THE MATTER OF THE CONDEMNATION OF LAND IN PARCELS
 39 2, 52 2 AND "CLIFTON" FOR A RIGHT OF WAY FOR A
 TRUNK SEWER.

The President of the United States:

To John Heiggins, Robert B. Higgins, Frank Higgins, Mary Higgins, Amelia Higgins and Margaret Welch, Rockville, Maryland; Fannie Barnard, Richard Barnard, William Barnard, Joseph B. Barnard, Robert E. Barnard, Frank Barnard, John Barnard, Caroline Barnard, and Kate Barnard of Sloane, Iowa; Ginnie Stone, John Stone, Robert Stone and William Stone, Brightwood, D. C.; Theodisia Hamilton, Lutherville, M. D.; John J. Barnard the Portner, Washing-

ton D. C.; Edward Barnard George F. Barnard Scranton Pa. Lawrance C. Barnard, Crawford, Col.; Montrose Barnard, Wilkesbarre, Pa.; Fraderick Barnard, Hamilton, Ohio; Eleanor Partridge, Fort Collins, Colorado; Robert B. Cissel, Elizabeth, N. J. Rebecca C. Coursen, Scranton, Pa. Maurice Adler and James Elverson Washington D. C. greeting:

You are hereby cited and admonished to appear in this Court on the 28th day of October, A. D. 1907, at 10 o'clock A. M., and answer the petition filed in the above entitled cause on the 7th day of October, 1907, and show cause why the prayers of said petition should not be granted, and the land described therein, and shown on the plat annexed thereto, should not be condemned for the purposes set forth in said petition, filed as aforesaid.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, this 7th day of Oct., A. D. 1907.

J. R. YOUNG, *Clerk*,
By F. E. CUNNINGHAM, *Assistant Clerk*.

No. 749 Dist. Doc. In re: Condemnation for trunk sewer. Citation. Served copy of within citation on within named Ginnie Stone (now Ginnie Lacey) and John J Barnard personally Oct. 15, 1907, Maurice Adler personally Oct. 16, 1907. All other within named persons not to be found. Oct. 26, 1907. Aulick Palmer, Marshal.

Filed October 29, 1907.

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2 AND
"CLIFTON" FOR RIGHT OF WAY FOR TRUNK SEWER.

It appearing to the Court that the owners and other parties interested in the land and premises mentioned and described in the petition filed in the above-entitled cause have been duly cited to appear herein and that the order passed herein on the 7th day of October, A. D. 1907, has been duly published as therein provided, it is, by the Court, this 29th day of October, A. D. 1907, ordered that John A. Hamilton, Wm. F. Gude and

Carl J. F. Graff be, and they are hereby appointed, Commissioners to appraise the value of the respective interests of all persons concerned in the land and premises in said petition mentioned after six days notice of the time and place
11 fixed for hearing, to the parties interested, or their attorneys of record, and to provide further in accordance with the provisions of Chapter XV of the Code of Law for the District of Columbia, under which this proceeding has been instituted.

By the Court,

JOB BARNARD,

Justice.

Oath of Commissioners and Order Noting Same.

Filed October 31, 1907.

In the Supreme Court of the District of Columbia,

Holding a District Court.

District Court No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39 2, 52 2 AND CLIFTON FOR A TRUNK SEWER.

Now come John A. Hamilton, William F. Gude, and Carl J. F. Graff, heretofore appointed Commissioners to appraise the value of the respective interests of all persons concerned in the land and premises mentioned and described in this proceeding as necessary for a Trunk Sewer, who being first duly sworn upon their several oaths say: That they will faithfully and impartially and to the best of their judgment appraise the value of the respective interests of all persons concerned in
12 said land and premises in accordance with the provisions of the Code of Law for the District of Columbia under which this proceeding is instituted; and it is this 31st day of October, A. D. 1907. ordered, that a note of the foregoing be made upon the minutes of the Court.

By the Court:—

JOB BARNARD,

Justice.

Notice to Property Owners.

Filed November 16, 1907.

In the Supreme Court of the District of Columbia,

Holding a District Court.

District Court, No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2 AND CLIFTON FOR RIGHT OF WAY FOR A TRUNK SEWER.

Please take notice that the Commissioners heretofore appointed herein to appraise the value of the several interests of the parties interested in the land and premises to be condemned for a right of way for a trunk sewer for which these proceedings were instituted will meet to view the land and rights of way on the premises at or about 10.30 o'clock, A. M. on Wednesday, the thirteenth day of November, A. D., 1907, and thereafter on Thursday the fourteenth day of November, A. D., 1907, the said Commissioners will meet at the U. S. Court House in a room to be designated by the United States Marshal at 1.30 o'clock, P. M., and hear such evidence as may be offered by the parties interested.

J. F. SMITH,

Attorney for the Commissioners of the District of Columbia.

To J. Holdsworth Gordon, Attorney for Robert Barnard's heirs, John Marshall Place, Washington, D. C.; Morris Adler, 3148 M Street, N. W., Washington, D. C.; and James Elverson, Office—Philadelphia Inquirer, Philadelphia, Pa.

This is to certify that I, Harry H. Humrichouse, have mailed copies of the above notice properly stamped, and addressed as above to the above named parties this 1st day of November, A. D., 1907.

HARRY H. HUMRICHOUSE.

Protest of Owner to Above Condemnation.

Filed November 16, 1907.

In the Supreme Court of the District of Columbia,

Holding a District Court.

District Court No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2 AND
"CLIFTON" FOR RIGHT OF WAY FOR A TRUNK SEWER.

To Messrs. John A. Hamilton, William F. Gude and
14 Carl J. F. Graff, Commissioners appointed by order
of October 29th, 1907 to appraise the value of the
several interests and to assess damages and benefits in the
above connection:

Now come Frederick E. Chapin and Frederick D. McKen-
ney, attorneys for and representing James Elverson, the owner
of the parcel of land designated in the above entitled proceed-
ings as "Clifton," and appearing specially for the purpose of
protesting the jurisdiction of the above-named Commissioners
to proceed further under the order of said Court, above speci-
fied, in so far as said parcel denominated "Clifton" may be
concerned, and appearing for no other purpose, and respect-
fully say:

First. No such notice of intention to appoint said Commis-
sioners to condemn said lands as is required by the statute in
such case made and provided, was given to said James Elver-
son.

Second. Said Commissioners are without lawful authority
to proceed to appraise the value of the right of way for the
projected trunk sewer through said parcel or to assess either
damages or benefits on account thereof because, (a) of the
failure to give such notice as above specified, (b) of the absence
of any statutory authority providing for the appointment of
said Commissioners.

Third. The Supreme Court of the District of Columbia was
without jurisdiction and authority to appoint said Commis-
sioners because (a) of insufficiency of notice in so far as the lands
belonging to said James Elverson is concerned, (b) of
15 the absence of any statute whatsoever authorizing the
appointment of commissioners for the purpose of con-
demning such lands for the right of way of the sewer in ques-
tion.

FREDERICK E. CHAPIN,
FREDERICK D. MCKENNEY,
*Attorneys for James Elver-
son, appearing specially.*

Motion of James Elverson, Sr., to Rescind Orders, &c.

Filed November 21, 1907.

In the Supreme Court of the District of Columbia
Holding a District Court.

District Court No. 749.

In re: CONDEMNATION OF LAND FOR A RIGHT OF WAY FOR A
TRUNK SEWER THROUGH PARCELS 39/2, 52/2, AND THE
TRACT KNOWN AS CLIFTON IN THE DISTRICT OF
COLUMBIA.

To the Honorable the Associate Justice of the Supreme Court
of the District of Columbia:

Now comes James Elverson, Sr., the owner of the parcel of
land denominated above as "Clifton", by his attorneys, Fred-
erick E. Chapin and Frederic D. McKenney, appearing spe-
cially for the purposes of this motion and for no other purpose
whatsoever, and moves this Honorable Court to rescind its
order entered herein on the 29th day of October, 1907, appoint-
ing John A. Hamilton, William F. Gude and Carl J. F.

16 Graff, commissioners to appraise the value of the
respective interests of all persons concerned in the land
and premises specified in the petition filed herein on the
7th day of October, 1907; and also to rescind the order of this
Court passed herein on the 31st day of October, 1907, noting
of record the fact that said John A. Hamilton, William F. Gude
and Carl J. F. Graff had taken their respective oaths to faith-
fully and impartially appraise the value of said parcels; and
to dismiss the said petition of the Commissioners of the Dis-
trict of Columbia filed herein on the 7th day of October, 1907,
as aforesaid.

And as ground for said motion, it is respectfully shown:

1. That this Honorable Court is without jurisdiction to en-
tertain said petition for the reason that the filing of the same
and the condemnation of the right of way for the trunk sewer
therein specified has not been authorized by any Act of the
Congress of the United States;

2. That the Commissioners of the District of Columbia are
without lawful authority to institute or maintain any such
proceeding as is specified in said petition;

3. That no sufficient or legal notice of the pendency of said
proceeding has at any time been given to the said James Elver-
son, Sr.;

4. That the attempt to condemn the right of way in question

through the property of said James Elverson, Sr. denominated herein as "Clifton" as aforesaid, is not authorized by law and the maintaining in this Court of said petition to condemn would amount to depriving said James Elverson, Sr. of his property without due process of law contrary to Article V of the Amendments to the Constitution of the United States.

Wherefore said James Elverson, Sr., owner of the land and property in question denominated as "Clifton" as aforesaid, appearing herein as above stated specially for the purposes of this motion and not otherwise, respectfully prays this Honorable Court to issue a rule herein addressed to the Honorable, the Commissioners of the District of Columbia as named in the petition filed herein, returnable at the convenience and pleasure of the Court requiring said Commissioners to show cause why the orders herein above specified should not be rescinded and said petition be dismissed.

FREDERICK E. CHAPIN,
FREDERIC D. MCKENNEY,
Attorneys appearing specially for James Elverson Sr.

DISTRICT OF COLUMBIA, SS:

I, Frederick E. Chapin, being first duly sworn on oath depose and say that I am a resident of the City of Washington, District of Columbia, and a Member of the Bar of the Supreme Court of said District; that on or about the 13th day of November, 1907, I was approached by James Elverson, Jr., the son of James Elverson, Sr., the owner of the parcel of land described as "Clifton" in the petition of the Commissioners of the District of Columbia filed in this Honorable Court under the above caption on or about the 7th day of October 1907, and was informed by said James Elverson, Jr. that his father, James Elverson, Sr., had left the United States in or about April, 1907, for Europe, where he was still sojourning and that he had not since the date of his said departure been within the United States or within the waters thereof; that at no time since the date of his departure had the said James Elverson, Sr., or any agent of his residing in the District of Columbia, or in the United States, been notified of the pendency of the above indicated proceeding involving the condemnation of a right of way for a trunk sewer through the said parcel or lot of land in said District of Columbia known as "Clifton"; that the first notice of the pendency of said proceeding which the said James Elverson, Jr. had was obtained

through the opening by him on or about the 9th or 10th day of November 1907, on his own return to this country from a trip abroad, of a notice addressed to his father and which was awaiting his return in his office in the City of Philadelphia, State of Pennsylvania, a copy of which said notice is annexed hereto and made a part hereof; that immediately upon becoming informed of the contents of said notice said James Elverson, Jr., acting on behalf of said James Elverson, Sr., and in his interest proceeded to the City of Washington and consulted with this affiant concerning the protection of his father's interests in the proposed proceeding and instructed this affiant to take such steps in the premises as the best interests of the said James Elverson, Sr. seemed to require.

This affiant makes this affidavit because of the absence of both James Elverson, Sr. and James Elverson, Jr.
19 from the jurisdiction of this Court.

FREDERICK E. CHAPIN.

Subscribed and sworn to before me this 21st day of November A. D. 1907.

[SEAL]

N. H. ROBBINS,
Notary Public D. C.

Copy

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court, No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2 AND CLIFTON FOR RIGHT OF WAY FOR A TRUNK SEWER.

Please take notice that the Commissioners heretofore appointed herein to appraise the value of the several interests of the parties interested in the land and premises to be condemned for a right of way for a trunk sewer for which these proceedings were instituted will meet to view the land and rights of way on the premises at or about 10.30 o'clock, A. M., on Wednesday, the thirteenth day of November, A. D., 1907, and thereafter on Thursday the fourteenth day of November, A. D., 1907, the said Commissioners will meet at the U. S. Court House in a room to be designated by the United States Marshal at 1.30 o'clock, P. M., and hear such evidence as may be offered by the parties interested.

*Attorney for the Commissioners
of the District of Columbia.*

To J. Holdsworth Gordon, Attorney for Robert Barnard's heirs, John Marshall Place, Washington, D. C.; and James Elverson, Office—Philadelphia Inquirer, Philadelphia, Pa.

This is to certify that I, Harry Humrichouse, have mailed copies of the above notice properly stamped, and addressed as above to the above named parties this 1st day of November, A. D., 1907.

21 *Affidavit of Frederick A. Kraft.*

Filed November 21, 1907.

In the Supreme Court of the District of Columbia

Holding a District Court.

District Court, No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2 AND
"CLIFTON" FOR RIGHT OF WAY FOR A TRUNK SEWER.

DISTRICT OF COLUMBIA, ss:

I, Frederick A. Kraft, being first duly sworn depose and say: That I am one of the Deputy United States Marshals for the District of Columbia, and that on the 16th day of October, A. D. 1907, I was directed to serve a copy of a citation heretofore issued herein against one James Elverson purporting to be the owner of the property known as "Clifton", in the District of Columbia; that I on that day went to the said property for the purpose of serving the said citation upon the said James Elverson, said property being improved by a dwelling which I understood was owned by Mr. Elverson. I was admitted to the premises by a man who said he was the caretaker of the house; I told him that I had a citation for service upon James Elverson in relation to the condemnation for right of way for a sewer through a part of the premises, which I desired to serve, and showed him the copy of the citation which I had for service. He stated to me that Mr. Elverson did not reside
22 on the premises; that he had not been there for nine years; that he thought he was at that time (meaning the then present time) in Europe; that the property was in charge of James Elverson, Jr., who might be reached through the office of the Philadelphia Enquirer, Philadelphia, Penn. Thereupon I noted the words "In Europe" upon the copy of the citation and the same was returned, "Not to be Found".

F. A. KRAFT.

Subscribed and sworn to before me this 21st day of November, A. D. 1907.

J. R. YOUNG, *Clk.*,
By F. E. CUNNINGHAM, *Asst. Clk.*

Supreme Court of the District of Columbia.

FRIDAY, November 22nd, 1907.

Session resumed pursuant to adjournment, present presiding, Justice Job Barnard.

* * * * *

No. 749. District Court.

In re: CONDEMNATION OF LAND FOR A RIGHT OF WAY FOR A
TRUNK SEWER THROUGH PARCELS 39/2, 52/2 AND THE
TRACT KNOWN AS CLIFTON IN THE DISTRICT OF
COLUMBIA.

Upon consideration of the motion filed herein on the 21st day of November 1907, on behalf of James Elverson, Sr., and of the affidavit of Frederick E. Chapin in support thereof, it is this 22d day of November A. D. 1907, ordered
23 that the said petitioners, Henry B. F. Macfarland, Henry L. West and Jay J. Morrow, Commissioners of the District of Columbia, be and they are hereby required to show cause on or before the 6th day of December A. D. 1907, why the said orders of this Court passed in the above entitled matter on the 29th and 31st days of October 1907, respectively, should not be rescinded and for naught held, and the petition of the said Commissioners filed herein on the 7th day of October, 1907, should not be dismissed at the costs of the said petitioners.

JOB BARNARD,
Associate Justice.

Order Extending Time for Return to Rule to Show Cause.

Filed December 5, 1907.

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court, No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2 AND
CLIFTON FOR A TRUNK SEWER.

On motion of the petitioners herein, and with the consent of
the parties, it is by the Court this 5th day of December, A. D.
1907, ordered: That the time for the return to the rule to show
cause issued herein on the 22nd day of November, A. D.
24 1907, be and the same is hereby extended to the 13th day
of December, A. D., 1907.

By the Court,

JOB BARNARD,

Justice.

Answer.

Filed December 13, 1907.

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2, AND
"CLIFTON" FOR RIGHT OF WAY FOR A TRUNK SEWER.

The respondents, Henry B. F. Macfarland, Henry L. West
and Jay J. Morrow, Commissioners of the District of Colum-
bia, answering the rule issued herein on the 22nd day of
November, A. D., 1907, to show cause why the petition filed
herein and the several orders of the Court had thereunder
should not be dismissed, say:—

The said respondents filed the said petition under the gen-
eral authority of section 483 of the Code of Law for the Dis-
trict of Columbia, which provides that whenever land in the
District is needed by the Commissioners of the District for

25 sites for school-houses, fire and police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and the same cannot be acquired by purchase from the owners thereof at a price satisfactory to the officers of the government authorized to negotiate for the same, application may be made to the Supreme Court of the District by petition in the name of said Commissioners, for the condemnation of said land or said right of way and the ascertainment of its value.

Your respondents say that in accordance with the provisions of the Act of Congress approved June 11th, 1878, they submitted to the Secretary of the Treasury estimates of appropriations required for the service of the fiscal year ending June 30th, 1908, which said estimates included an item of \$150,000.00 for suburban sewers; that said estimate of \$150,000.00 for suburban sewers was submitted as a whole in accordance with the established practice of submitting such estimates. That the estimates for suburban sewers, and the appropriations made therefor have been as a rule general estimates and appropriations, as appears from the records of the Commissioners of the District of Columbia, for a period of at least fifteen years. That occasionally special estimates are submitted for special sewer projects in the suburbs independently of this general estimate, but such special projects are usually initiated and brought to the attention of the District Commissioners or of Congress by parties interested in such projects outside of the District government.

26 That the Secretary of the Treasury approved of, and transmitted to Congress the estimates submitted by the Commissioners of the District of Columbia to him, of appropriations required for the service of the fiscal year ending June 30th, 1908, which estimates included the item of \$150,000.00 for suburban sewers above referred to, as will appear by reference to "Estimates of Appropriations 1908", Document, No. 12, 59th Congress, page 427.

Your respondents further say that when the District of Columbia Appropriation Bill was under consideration by the sub-committee of the House of Representatives having said bill in charge, they submitted to said sub-committee a detailed report of the purposes for which said appropriation of \$150,000.00 was required, a copy of which report is hereto annexed and prayed to be read as a part hereof. One of the items in which said report, as will appear by reference thereto is "Sewer in valley north of R Street between Rock Creek and Wisconsin Avenue, \$45000.00".

The District Appropriation Bill for the Fiscal Year ending June 30th, 1908 contained an appropriation for suburban sew-

ers of \$100,000.00, a scaling down of the sum requested to the extent of \$50,000.00, which is a practice of Congress, not unusual in making such appropriations.

Your respondents thereafter filed their petition herein praying the condemnation of certain rights of way described in said petition, which rights of way consisted of an easement in a strip of land twelve feet in width, following the line of a stream which runs through a valley just north of R Street in Georgetown and south of the Naval Observatory Grounds, for the purpose of the construction and operation of a sewer thereon. The rights of way so described for the said
 27 sewer follows the line of the valley immediately north of R Street in Georgetown between Wisconsin Avenue and Rock Creek, which is the only valley in that vicinity, and is the most direct and economical line for the location of a sewer between the said Wisconsin Avenue and Rock Creek, the purpose for which the Commissioners of the District of Columbia, your respondents, deem the construction of this sewer necessary is to furnish sewer facilities to the northern section of Georgetown, and the outlying county territory lying contiguous thereto, which section is rapidly developing, and for which sewer facilities have become a necessity, not only for purposes of convenience, but in the interest of the public health.

Your respondents say that they are advised that the appropriation by Congress of the \$100,000.00 aforesaid for the construction of suburban sewers authorizes them to construct suburban sewers to the extent of the \$100,000.00 appropriated, and particularly to construct the sewer in the valley north of R Street between Wisconsin Avenue and Rock Creek, the right of way for which is sought to be condemned in these proceedings, as otherwise, said appropriation of \$100,000.00 would be without any force or effect whatsoever. Your respondents refer to the hearings before the sub-committee of the House Committee on Appropriations in charge of the District of Columbia Appropriation Bill (Hearings on D. C. Appropriation Bill, page 85 et seq.) as showing that Congress was fully apprised of the character and location of the various projects for which said appropriation for suburban sewers was requested. The fact that the appropriation made was
 28 \$50,000.00 less than the estimates signifies only that Congress, as is not unusual, contemplated a general scaling down of the cost of all the items for which the said sum was asked.

Your respondents say that under the authority of the said appropriation of \$100,000.00, and under the provisions of section 483 of the Code of Law for the District of Columbia, they

undertook, as they are advised it was their duty to do, to acquire a right of way for a sewer in the valley north of R Street between Rock Creek and Wisconsin Avenue, and having, as they are advised, sufficiently answered, pray that said rule to show cause issued herein be discharged.

HENRY B. F. MACFARLAND,
HENRY L. WEST,
JAY J. MORROW,

Commissioners of the District of Columbia.

EDWARD H. THOMAS,
J. F. SMITH,
Attorneys for Respondent.

DISTRICT OF COLUMBIA, ss:

I, Henry B. F. Macfarland, being first duly sworn, depose and say that I am President of the Board of Commissioners of the District of Columbia; that I have read the foregoing Answer by me subscribed and know the contents thereof; that the facts therein stated upon my official knowledge are true and those stated on information and belief I believe to be true.

HENRY B. F. MACFARLAND.

Subscribed and sworn to before me this eleventh day of December, A. D., 1907.

WILLIAM TINDALL,
Notary Public.

[SEAL]

29 *Suburban Sewers, Fiscal Year 1907-8, Projected Work.*

Conduit Road Sewers.....	\$19,525
Tennallytown sewers.....	6,000
Sewer in valley north of R Street, between Rock Creek and Wisconsin Avenue.....	45,000
Ivy City Sewers.....	21,400
Fourteenth Street extended Sewers.....	31,700
Benning Road Sewers.....	3,000
Trinidad Sewers.....	7,000
Langdon Sewers.....	5,000
Anacostia Sewers.....	10,000
	<hr/>
	148,625

Filed February 7, 1908.

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court No. 749.

*Re-CONDEMNATION OF LAND FOR A RIGHT OF WAY FOR A TRUNK
SEWER THROUGH PARCELS 39/2, 52/2 AND THE TRACT
KNOWN AS "CLIFTON" IN THE DISTRICT OF
COLUMBIA.*

Now comes James Elverson, by his attorneys, and not waiving his objections heretofore set forth to the further prosecution of this cause as against said parcel of land called "Clifton" for want of service of process and notice as required by law and the rules of this Court, but expressly insisting thereon, and still appearing specially for the sole purpose of protesting the jurisdiction of this Honorable Court in the premises, says that said Respondents, by reason of anything in their said Return to the Rule to show cause heretofore issued out of this Honorable Court should not be permitted to further prosecute the above entitled proceedings as against said parcel of land known as Clifton, for the reason that it clearly appears both from said Return to the Rule and also from the laws in force in the District of Columbia that said Respondents are without lawful power or authority to maintain or prosecute said proceedings and this Honorable Court is without jurisdiction or lawful power to entertain the same or grant
31 the relief prayed for therein.

And as ground for such demurrer respectfully says:
1st. That as fully appears from Respondents' Return to said Rule to show cause that neither the project of acquiring a right of way for a sewer through the parcel of land called Clifton, or elsewhere, nor the estimated cost thereof, has been submitted to the Secretary of the Treasury in detail as required by law, and no appropriation for such purpose has ever been made by the Congress nor has the acquisition and use of such a right of way been authorized by the Congress, and in the absence of the submission of such an estimate to the Secretary of the Treasury for his approval, or the making of such appropriation and the authorization of such acquisition and use by the Congress, said Respondents are without lawful power to maintain these proceedings.

Wherefore, your orator says that the order entered herein by this Honorable Court on or about the 29th day of October A. D. 1907, appointing commissioners to assess damages and benefits in connection with the condemnation of a right of way through said tract or parcel of land known as Clifton should be revoked and held for naught.

F. E. CHAPIN,
FREDERIC D. McKENNEY,
Attorneys for James Elver-
son appearing specially.

We hereby certify that in our opinion the foregoing demurrer is well founded.

F. E. CHAPIN,
FREDERIC D. McKENNEY.

32 . *Decree.*

Filed March 2, 1908.

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court Docket No. 749.

*Re-CONDEMNATION OF LAND FOR RIGHT OF WAY FOR A TRUNK
SEWER THROUGH PARCELS 39/2, 52/2 AND THE TRACT
KNOWN AS "CLIFTON" IN THE DISTRICT OF
COLUMBIA.*

This cause coming on for further hearing upon the petition of Henry B. F. Macfarland and others, Commissioners of the District of Columbia, and the Exhibits filed therewith; the Rule to show cause why said petition should not be dismissed and the return of said Henry B. F. Macfarland and others, Commissioners as aforesaid, thereto; and the demurrer of James Elverson to said return, the same having been set down for hearing by consent of counsel, and the same having been fully argued by counsel for the respective parties, and the Court being now sufficiently advised in the premises, It is this 2d day of March, A. D. 1908, adjudged, ordered and decreed that the demurrer of James Elverson, Esquire, to the return to said rule to show cause be and the same is hereby sustained.

And the Commissioners of the District of Columbia, petitioners herein, electing to abide by their return to said rule and

not moving for leave to amend or otherwise add to the same, and it appearing to the Court that said Commissioners of the District of Columbia are without authority of law to construct the trunk sewer described in their said petition or to condemn a right of way therefor through the properties described in their said petition and held in private ownership, It is further adjudged, ordered and decreed that said petition be and the same is hereby dismissed, and all proceedings herein subsequent to said petition be held as naught.

And it is further decreed that the said James Elverson do have and recover of the District of Columbia his costs herein incurred to be taxed.

JOB BARNARD,
Justice.

From the above decree, the petitioners, in open Court, pray an appeal, which is granted.

JOB BARNARD,
Justice.

34 *Directions to Clerk for Preparation of Transcript of Record.*

Filed March 16, 1908.

In the Supreme Court of the District of Columbia.

Holding a District Court.

District Court No. 749.

In re: CONDEMNATION OF LAND IN PARCELS 39/2, 52/2 AND CLIFTON FOR A RIGHT OF WAY FOR A TRUNK SEWER.

The Clerk will please make a Transcript of the following papers for the Record on Appeal in the above-entitled cause.

1. Petition of the Commissioners of the District of Columbia, filed October 7th, 1907.
2. Order of Publication, filed October 7th, 1907.
3. Citation issued October 7th, 1907.
4. Return of Citation, filed October 28th, 1907. Memorandum; Proofs of publication, Star, Post, Herald and Law Reporter.
5. Order appointing Commission, filed October 29th, 1907.
6. Oath to Commissioners and order noting same, October 31st, 1907.

7. Notice to Property owners of time and place of hearing, November 16th, 1907.

8. Protest of James Elverson, November 16th, 1907.

9. Motion of James Elverson to rescind orders of 35 October 29th and 31st, filed November 21st, 1907.

10. Affidavit of F. A. Kraft, filed November 21, 1907.

11. Rule on Commissioners, D. C. to show cause, filed November 22d, 1907.

12. Time for return to rule to show cause extended, filed December 5th, 1907.

13. Return to rule to show cause, filed December 13.

14. Demurrer of James Elverson to return, filed February 7th, 1908.

15. Order sustaining demurer and dismissing petition, filed March 2d, 1908.

16. Appeal of Commissioners, filed March 2, 1908.

JAS. FRANCIS SMITH,
*Attorney for Commissioners,
D. C., Appellants.*

36 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia. } ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 35, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript In re: Condemnation of Land for a Right of Way for a Trunk Sewer Through Parcels 39/2, 52/2, and The Tract Known as Clifton in the District of Columbia, No. 749 District Court Docket, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of April, A. D. 1908.

[SEAL]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1895. Henry B. F. Macfarland, et al, appellants, vs James Elverson. Court of Appeals, District of Columbia. Filed Apr. 13, 1908. Henry W. Hodges, clerk.

IN THE

Court of Appeals, District of Columbia.

OCTOBER TERM, 1908.

No. 1895.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND
JAY J. MORROW, COMMISSIONERS OF THE DISTRICT OF
COLUMBIA, APPELLANTS,

vs.

JAMES ELVERSON, APPELLEE.

BRIEF OF COUNSEL FOR APPELLANTS.

STATEMENT OF THE CASE.

The Commissioners of the District of Columbia, under the authority of sections 483 *et seq.* of the Code of law for the District of Columbia, filed their petition for the purpose of acquiring certain rights of way necessary for the construction of a sewer through certain tracts of ground located in the valley north of R street, between Wisconsin avenue and Rock Creek, in Georgetown. The tracts through which the right of way was sought were held in private ownership,

one of which was a tract known as Clifton, owned by James Elverson, the appellee, and which comprised about one-third of the right of way necessary for the construction of the sewer. After service of notice personally upon the owners of the other tracts required, and notice by publication, in accordance with an order of the court, the said James Elverson being a non-resident, a commission was appointed to appraise the value of the respective interests of all parties concerned in the rights of way mentioned and described in the petition, which commission, after due notice to all the parties interested who could be found by the marshal in the District of Columbia, viewed the land and premises to be condemned, and thereafter, at a time specified in the said notice, met for the purpose of hearing such testimony as might be offered by the owners of the property interested. At the time set for the said hearing, counsel representing the said Elverson appeared before the said commission and protested the jurisdiction of the said commission in the premises upon the ground, first, that no notice of the intention to appoint the said commission was given to the said James Elverson; second, that the commission were without lawful authority to proceed to appraise the value of the right of way required for the said sewer through the parcel of land owned by the said Elverson, because (a) of the failure to give such notice as is specified, and (b) of the absence of any statutory authority providing for the appointment of said commissioners; and, third, that the Supreme Court of the District of Columbia was without jurisdiction and authority to appoint such commissioners, because (a) of the insufficiency of the notice in so far as the lands of Elverson were concerned, and (b) of the absence of any statute whatsoever authorizing the appointment of commissioners for the purpose of condemning such lands for the right of way for the sewer in question.

Thereafter counsel for the said Elverson filed in court a motion to rescind the order appointing the commissioners,

and the order noting the oath of the said commissioners on the record, and to dismiss the petition of the commissioners, upon the ground:

1. That the court was without jurisdiction to entertain the said petition for the reason that the filing of the same and the condemnation of the right of way for the trunk sewer therein had not been authorized by any act of Congress of the United States.

2. That the Commissioners of the District of Columbia were without lawful authority to institute or maintain any such proceeding as is specified in said petition.

3. That no sufficient or legal notice of the pendency of said petition has at any time been given to the said James Elverson, Sr., or that the attempt to condemn the right of way in question through the property of said James Elverson, Sr., denominated herein as "Clifton," as aforesaid, is not authorized by law, and the maintaining in this court of said petition to condemn would amount to depriving said James Elverson, Sr., of his property without due process of law, contrary to Article 5 of the amendments to the Constitution of the United States.

And the said Elverson by his counsel further prayed the court to issue a rule upon the Commissioners of the District of Columbia requiring said Commissioners to show cause why the order herein above specified should not be rescinded and the said petition dismissed.

Responding to said rule, the said Commissioners answered that they had filed the said petition under the general authority of section 483 of the Code of law for the District of Columbia, which provides that whenever land in the said District is needed by the Commissioners for the District for sites for school-houses, fire and police stations, or for right of way for sewers, or for any other municipal use authorized by Congress, and the same cannot be acquired by purchase from the owners thereof at a price satisfactory to the officers of the Government authorized to negotiate

for the same, application may be made to the Supreme Court of the District by petition in the name of the said Commissioners for the condemnation of said land or said right of way and the ascertainment of its value.

Further answering said rule, the said Commissioners stated that in accordance with law they submitted to Congress certain estimates of appropriations required by the District of Columbia for the service of the fiscal year ending June 30, 1908, which said estimates included an item of \$150,000 for suburban sewers; that the said item for suburban sewers was submitted in accordance with the uniform practice of the said Commissioners for many years in submitting the estimates for suburban sewers; that accompanying said estimates they submitted an itemized list of the various projects for which the said sum of \$150,000 was desired, which list included an item of \$45,000 for a "sewer in the valley north of R street between Rock Creek and Wisconsin avenue;" that the right-of way sought to be condemned in this proceeding followed the line of a valley north of R street between Rock Creek and Wisconsin avenue, which was the only valley running from Wisconsin avenue to Rock Creek in that vicinity; that Congress appropriated the sum of \$100,000 for suburban sewers in the appropriation bill for the fiscal year ending June 30, 1908, which was \$50,000 less than the amount requested by the said Commissioners, the said Commissioners further stating in their answer aforesaid that such scaling down of the estimates submitted by them was the usual practice of Congress; and the said Commissioners claimed that under the authority of section 483 *et seq.* of the Code aforesaid, and by reason of the appropriation of \$100,000 for suburban sewers aforesaid, they were authorized to construct sewers in the suburbs of Washington to the limit of the appropriation of \$100,000, and were especially authorized to construct a sewer in the valley between Wisconsin avenue and Rock

Creek north of R street, for which the petition in this case was instituted. Counsel for the said Elverson thereupon interposed a demurrer to the said return of the Commissioners to the said rule to show cause, which said demurrer, after argument by counsel, was sustained by the court, and the petition herein and the proceeding had thereunder were dismissed by decree of the court, from which decree the petitioner has noted an appeal.

ASSIGNMENT OF ERRORS.

1. The court erred in sustaining the demurrer of the appellees to return to the rule to show cause aforesaid.

2. The court erred in dismissing the petition filed herein and the proceedings subsequent thereto.

ARGUMENT.

I.

THE CONSTRUCTION OF SECTION 483 OF THE CODE.

Section 483 of the Code is as follows:

“SEC. 483. *Land for United States and District of Columbia.*—Whenever land in the District is needed for the use of the United States, or by the Commissioners of the District for sites of school-houses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and the same cannot be acquired by purchase from the owners thereof at a price satisfactory to the officers of the Government authorized to negotiate for the same, application may be made to the Supreme Court of the District by petition in the name of the United States or of said Commissioners, as the case may be, for the condemnation of said land or said right of way and the ascertainment of its value.”

The court below held that in order to empower the Commissioners of the District of Columbia to acquire land by condemnation for right of way for sewers under this provision, the particular project must be specifically authorized by Congress, and as there appeared in the judgment of the court below to be no such authorization in this case, the Commissioners were therefore without authority to exercise the right of eminent domain in the premises.

In this we contend the court below was in error.

Section 483, according to the contention of the appellants, confers upon the Commissioners of the District of Columbia general authority, whenever land in said District is needed for a right of way for sewers, to acquire the same by condemnation, regardless of whether or not the particular project for which the right of way is desired has been especially authorized by Congress.

It is submitted that the words "authorized by Congress," in section 483, relate to any public use *other* than those previously enumerated in the law, namely, "sites for school-houses, fire or police stations, or for a right of way for sewers."

This construction is supported: in the first place, by the general rules of punctuation. While it is a rule of construction that the obvious meaning of a law will not be controlled or altered by reason of punctuation-marks solely, yet the later decisions are that they should not be disregarded, and that if there is any ambiguity of construction, the punctuation may be looked to to remove it, the rule being, as stated in Lewis' Sutherland Statutory Construction, section 361, that—

"When the intent is uncertain, punctuation may afford some indication of the true intent, and may be looked to as an aid and may even determine the construction, but it is never allowed to have a controlling effect. An act should be read as punctuated unless there is some reason to the contrary, and this is especially true where a statute has been repeatedly re-enacted with the same punctuation."

The rule is further stated in *Trustees vs. White*, 48 Ohio State, 577, as follows:

"Now, in construing a statute punctuation may be changed or disregarded, and will not ordinarily control, unless other means fail. At the same time, it is more or less to be relied upon in ascertaining the meaning intended. The position of a comma in one place or another should not be allowed to subvert the obvious meaning of a sentence. On the other hand it should not, without reason appearing for it, be disregarded. If that which appears to have been the general purpose of the legislature is as well effectuated by reading the statute exactly as it has been caused to be printed as it would be by changing it, even as to punctuation, no adequate motive is present moving to the change."

This language is quoted with approval in a number of other cases.

In *Tyrell v. The Mayor, &c., of New York*^{159 N.Y. 239} the court, construing a statute providing for the compensation of various classes of employes, the language of which in part is as follows:

"The annual salaries and compensation of the members of the uniformed force of the Department of Street Cleaning especially fixed by the Board of Estimate and Apportionment shall not exceed the following: Of the General Superintendent, \$3,000; of the Assistant Superintendent, \$2,500; of the Master Mechanic, \$1,800; * * * of the Time Collectors, \$1,200; of the Section Foremen, \$1,000 each; * * * of the Hostlers, \$720 each, and extra pay for work on Sundays,"

where it was contended that the words "and extra pay for work on Sundays" related to all of the previously enumerated classes of employes, held that the words related only to the class mentioned in that particular clause, namely, "of the Hostlers, \$720 each," the court stating:

"The punctuation of this statute is of material aid in learning the intention of the legislature. While an act of Parliament is enacted as read, and the original rolls contain

no marks of punctuation, the statutes of this State are enacted as read and printed, so that the punctuation is a part of the act as passed and appears in the roll when filed with the Secretary of State. * * *

"The punctuation, however, is subordinate to the text, and it is never allowed to control its plain meaning, but when the meaning is not plain, resort may be had to those marks, which for centuries have been in common use, to divide writings into sentences, and sentences into paragraphs and clauses, in order to make the author's meaning clear. The sentence under consideration contains more than two hundred words, divided into nineteen clauses. The first clause separated from the rest by a colon, is general, and applies the command of the legislature to all that follows. The rest of the sentence consists of eighteen clauses, each separate from and made independent of the others by an intervening semicolon. While each must be read in connection with the said general command, neither may be read in connection with any other part of the sentence. Each clause contains a comma, separating the position named from the salary belonging to it, and is complete in itself, except that it depends for part of its meaning upon the primary command with which the sentence opens. The words relating to extra pay are not separated from the remaining words of the clause by a semicolon, as would be expected if they applied to the preceding clauses, but by a comma, which indicates the intention to limit their application to the clause in which they appear. This clear system of punctuation forbids, as we think, that the last words of the last clause, namely, 'and extra pay for work on Sundays,' should be read as a part of each of the other clauses except the first, which is obviously general in its application."

In Squire's case, 12 Abbott's Practice, at page 43, the court, construing the words "No person holding office under this act shall be liable to military or jury duty, nor to arrest on civil process, or to the service of subpœnas from civil courts, while actually on duty," said:

"It is contended on the part of the relator, that the limitation contained in the above section, of the exemption from arrest to the time 'while' the officer is 'actually on duty,'

applies only to the last antecedent clause of the section, that is, to the words 'or to the service of subpoenas from civil courts;' but I do not think the grammatical construction of the section justifies this conclusion. The phraseology is not as clear, distinct, or definite as it ought to be, and might have been; but still I think it can be sufficiently gathered from the language and structure of the section that the words 'while actually on duty,' refer to more than one antecedent. Punctuation often determines the meaning of a sentence, as well as any other characteristic of it; *and in this case we find a comma inserted after the words, 'or to the service of subpoenas from civil courts,' and before the words 'while actually on duty,'* thus separating them, which it would not be proper to do, if the last words relate exclusively to the single clause immediately preceding them, but which it would be proper to do, and which is always done in sentences correctly construed when there is more than one antecedent to the words immediately following the comma."

The case in question, it will be noted, is exactly the converse of the case at bar, and the language of the learned judge as to the significance of the presence or absence of a comma fits the present case perfectly.

In *Cummings v. Akron Cement and Plaster Company*, 6 Blatchford, 510, the court, speaking on this question, said:

"The phrase, 'pursuant to law' in the act of February 26, 1853, 10 U. S. Stat. at Large, 161, must be held to apply to the attendance of witnesses before commissioners only; for the punctuation of the statute seems to designate this phrase from the prior part of the sentence, relating to attendance in court, and a subsequent provision of the same act, which provides 'that the amount paid printers and witnesses shall be taxed, &c., and be included and form a part of the judgment or decree against the losing party' without any restriction or limitation, must entitle the party to tax such fees."

The text of the provision under discussion which relates to the allowance of witness fees and which is not set out in the opinion is:

"For each day's attendance in court, or before any other officer pursuant to law, one dollar and fifty cents."

It was contended that a witness who appeared in court without subpoena was not entitled to taxable fees, it being argued, apparently, that the words "pursuant to law" restricted the allowance of taxable fees to witnesses who appeared in court under summons. The court held, however, that the words "pursuant to law" related only to the words "or before any other officer" in the same clause, and not the words "for each day's attendance in court" in the preceding clause, which was separated by a comma from the words "or before any other officer pursuant to law."

On the question of punctuation this case is exactly at par with the present case.

This question is discussed in about the same line in *Commonwealth v. Kelly*, 177 Mass., 221; *People v. Gwent*, 70 Hun., 233.

Applying the reasoning of these authorities to the case at bar, it is apparent that the words "or for any other municipal use authorized by Congress," being separated from the other clauses by a comma, stand by themselves. There being no comma between the words "or for any other municipal use" and the words "authorized by Congress," the words last mentioned should be held to apply only to "any other municipal use."

It was obviously the intention of Congress to authorize the Commissioners to condemn land for the purposes ordinarily incidental to municipal government, and that for any municipal use other than those, as, for example, public playgrounds, &c., special authority of Congress would be necessary. This construction is in accord with general modern usage in this connection.

Lewis on Eminent Domain, section 258, says:

"In nearly all statutes conferring the powers of eminent domain, some discretion is left with those who are vested

with the power in respect to the designation of the property to be taken. Formerly, when public works were constructed mostly under special laws and charters, it was common to specify with more or less particularity the termini and route of any proposed railroad, canal, or other public way; but in the present day it is more common to provide by general laws for all works of this character, in which both the route and termini are left to the determination of those who wish to avail themselves of the statute."

The validity of such general laws have been sustained in many cases.

Methodist Church *v.* Baltimore, 6 Gill, 391.

Alexandria *v.* Baltimore, 5 Gill, 383.

Slingerland *v.* Newark, 54 N. J. Laws, 62.

Weir *v.* St. Paul, &c., Railroad Company, 18 Minn., 155.

Buffalo, &c., Railroad Company *v.* Brainard, 9 N. Y., 100.

These cases also instance the common and modern practice of conferring the right of eminent domain in certain classes of cases, upon corporations, and particularly and to a larger degree upon municipal corporations.

The construction contended for here is, moreover, in accord with the general trend of such legislation in this District. The purposes enumerated in this act, namely, "sites for school-houses, fire or police stations, or for a right of way for sewers," together with the opening and extension of the streets and alleys, constitute the usual objects for the effecting of which the power of eminent domain is conferred upon municipalities. In this District the opening and extension of streets and alleys is provided for by general laws, and it was manifestly the intention of Congress in this provision of the Code to provide by general law, and without further specific authority, for the acquisition of sites for school-houses, fire or police stations, and rights of way

for sewers; the further provision of the law, "or for any other municipal use authorized by Congress," being intended to provide for any use other than those previously enumerated.

11.

THE USE FOR WHICH THIS RIGHT OF WAY IS SOUGHT TO BE CONDEMNED WAS AUTHORIZED BY CONGRESS.

The return of the Commissioners of the District of Columbia to the rule to show cause states, and these statements are admitted by the demurrer, that in compliance with the law they submitted certain estimates of expenses for the government of the District of Columbia for the year 1908 to the Secretary of the Treasury, which estimates included an item of \$150,000 for suburban sewers; that these estimates were transmitted by the Secretary of the Treasury to Congress; that the estimates for suburban sewers and the appropriation made therefor have been as a rule general estimates and appropriations, as appears from the records of the Commissioners of the District of Columbia for a period of at least fifteen years; that they transmitted together with the said estimates a detailed statement of the purposes for which the said appropriation of \$150,000 was desired, which statement included an item of \$45,000 for a sewer in the valley north of R street between Rock Creek and Wisconsin avenue, meaning thereby the sewer the right of way for which is sought to be condemned in this proceeding, which right of way lies in the valley north of R street between Wisconsin avenue and Rock Creek; that Congress appropriated \$100,000 for the purpose of constructing said suburban sewers; that the scaling down of their estimates to the extent of \$50,000 was in accordance with the usual practice of Congress in this matter, the significance of which was that the cost of each item submitted should be scaled down proportionately.

We contend that if these facts, which are admitted, mean anything, it is that Congress, by the appropriation of \$100,000 for suburban sewers, intended to authorize and did authorize the Commissioners of the District of Columbia to construct suburban sewers to the extent of the amount appropriated, at their discretion, and especially in view of the fact that Congress had before them the itemized list of projects for which said appropriation was asked; that the plain import of the appropriation was that Congress authorized the construction of a sewer in the valley north of R street, between Wisconsin avenue and Rock Creek.

We therefore contend that the court below erred in sustaining the demurrer to the rule to show cause, and in dismissing the petition filed herein and the proceedings had thereunder, and that its decree should be reversed.

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